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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

**Argentina, Cape Verde, Ecuador, Egypt, Guatemala, Honduras, Japan, Liechtenstein, Mexico, Norway and Peru: draft resolution**

## Protection of human rights and fundamental freedoms while countering terrorism

*The General Assembly*,

*Reaffirming* the purposes and principles of the Charter of the United Nations,

*Reaffirming also* the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

*Recalling* its resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/191 of 20 December 2004, 60/158 of 16 December 2005 and 61/171 of 19 December 2006, Commission on Human Rights resolutions 2003/68 of 25 April 2003,[1] 2004/87 of 21 April 2004[2] and 2005/80 of 21 April 2005[3] and other relevant resolutions of the General Assembly and the Commission on Human Rights,

*Reaffirming* that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

*Reiterating* the important contribution of measures taken at all levels against terrorism, consistent with international law, in particular international human rights law and refugee and humanitarian law, to the functioning of democratic institutions and the maintenance of peace and security and thereby to the full enjoyment of human rights, as well as the need to continue this fight, including through international cooperation and the strengthening of the role of the United Nations in this respect,

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[1] See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), chap. II, sect. A.

[2] Ibid., *2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[3] Ibid., *2005, Supplement No. 3* and corrigendum (E/2005/23 and Corr.1), chap. II, sect. A.

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*Deeply deploring* the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee law and international humanitarian law,

*Welcoming* the establishment by the Commission on Human Rights, in its resolution 2005/80, of the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

*Recalling* its resolution 48/141 of 20 December 1993 and, inter alia, the responsibility of the United Nations High Commissioner for Human Rights to promote and protect the effective enjoyment of all human rights,

*Welcoming* the work of the Human Rights Council in promoting universal respect for the protection of all human rights and fundamental freedoms for all,

*Recognizing* the importance of the United Nations Global Counter-Terrorism Strategy, adopted by the General Assembly on 8 September 2006,[4] and reaffirming its relevant clauses on the measures to ensure respect for human rights for all, international humanitarian law and the rule of law as the fundamental basis for the fight against terrorism,

*Reaffirming* that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,[5]

*Reaffirming its unequivocal condemnation* of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

*Reaffirming* that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

*Recognizing* that the respect for all human rights, the respect for democracy and the respect for the rule of law are interrelated and mutually reinforcing,

*Noting* the declarations, statements and recommendations of a number of human rights treaty monitoring bodies and special procedures on the question of the compatibility of counter-terrorism measures with human rights obligations,

*Noting with concern* the persistence of measures that continue to undermine human rights and the rule of law, such as secret detention and the irregular transfer of individuals suspected of terrorist activities; the sole use of diplomatic assurances, memorandums of understanding or other transfer agreements without comprehensive assessment of risk to justify return to places where they face a real risk of torture, ill-treatment or other serious human rights violations in breach of the absolute prohibition of refoulement; the continued detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and minimum due

[4] Resolution 60/288.

[5] See sect. I, para. 17, of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

process guarantees, including the right to judicial review of detention; limitations to effective judicial scrutiny of counter-terrorism measures; and issues such as the profiling of individuals and the respect for the principle of legality when defining terrorism,

*Recalling* Human Rights Council resolution 5/1 of 18 June 2007,[6]

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deplores* the suffering caused by terrorism to the victims and their families and expresses its profound solidarity with them;

3. *Calls upon* States to continue to implement the United Nations Global Counter-Terrorism Strategy, which reaffirms respect for human rights for all and the rule of law to be the fundamental basis of the fight against terrorism;

4. *Reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[7] to respect certain rights as non-derogable in any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlines the exceptional and temporary nature of any such derogations;[8]

5. *Calls upon* States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

6. *Reaffirms* that counter-terrorism measures should be implemented in full consideration of human rights of persons belonging to minorities and must not be discriminatory on grounds such as race, colour, sex, language, religion or social origin;

7. *Urges* States to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

8. *Calls upon* States to refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever there is a real risk of persecution, torture or any other form of inhuman, cruel or degrading treatment or punishment;

9. *Also calls upon* States to ensure that guidelines and practices in all military and border control operations and other pre-entry mechanisms are clear and fully respect the pertinent principles and obligations under international law, particularly refugee law and human rights law, towards persons seeking international protection;

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[6] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), chap. IV, sect. A.

[7] See resolution 2200 A (XXI), annex.

[8] See, for example, General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

10. *Urges* States, while countering terrorism, to ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights,[9] the International Covenant on Civil and Political Rights and the Geneva Conventions of 1949,[10] in their respective fields of applicability;

11. *Opposes* any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law, and urges States to respect the safeguards concerning the liberty, security and dignity of the person and to treat all prisoners in all places of detention in accordance with international law, including human rights law and international humanitarian law;

12. *Reaffirms* that it is imperative that all States work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law, while countering terrorism;

13. *Encourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to give due consideration to the recommendations of the special procedures and mechanisms of the Human Rights Council and the relevant comments and views of United Nations human rights treaty bodies;

14. *Takes note with interest* of the report of the Secretary-General[11] and takes note with appreciation of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism submitted pursuant to General Assembly resolution 61/171;[12]

15. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant special procedures and mechanisms of the Human Rights Council, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism;

16. *Acknowledges with appreciation* the cooperation between the Special Rapporteur and all relevant procedures and mechanisms of the Human Rights Council as well as the United Nations human rights treaty bodies, and urges them to continue their cooperation, in accordance with their mandates, and to coordinate their efforts, where appropriate, in order to promote a consistent approach on this subject;

17. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by reacting promptly to the urgent appeals of the Special Rapporteur and providing the information

[9] Resolution 217 A (III).

[10] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

[11] A/62/298.

[12] See A/62/263.

requested, as well as to cooperate fully with other relevant procedures and mechanisms of the Human Rights Council dealing with the promotion and protection of human rights and fundamental freedoms while countering terrorism;

18. *Welcomes* the work done by the United Nations High Commissioner for Human Rights to implement the mandate given to her in resolution 60/158, and requests the High Commissioner to continue her efforts in this regard;

19. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Human Rights Council and to the General Assembly at its sixty-third session;

20. *Decides* to consider at its sixty-third session the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.